March 2003

Reference Number: 2003-40-090

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY WASHINGTON, D.C. 20220

March 27, 2003

MEMORANDUM FOR ACTING COMMISSIONER WENZEL

Gordon C. Willown =

FROM: Gordon C. Milbourn III

Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Fiscal Year 2003 Statutory Audit of

Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 200240070)

This report presents the results of our review to determine if the Internal Revenue Service (IRS) complied with legal guidelines set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.¹

RRA 98 § 1204 (a) prohibits the IRS from using a record of tax enforcement results (ROTER) to evaluate employees or to impose or suggest production quotas or goals. Section 1204 (b) requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard. Section 1204 (c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner. The Treasury Inspector General for Tax Administration (TIGTA) is required under Internal Revenue Code (I.R.C.) § 7803(d)(1) (Supp. IV 1998) to annually evaluate the IRS' compliance with the provisions of RRA 98 § 1204.

In summary, a review of 74 judgmentally sampled employees' performance and related supervisory documentation prepared between October 1, 2001, and August 31, 2002, showed that the IRS is generally in compliance with RRA 98 § 1204. No instances of potential violations of the use of ROTERs were found. In 96 percent of the employee performance evaluations reviewed, documentation also supported that employees were evaluated on the fair and equitable treatment of taxpayers. The IRS incorporated this

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¹ IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

standard into one performance evaluation document for all employees. This reduced potential violations and improved compliance with § 1204 (b). In addition, a review of a statistical sample of 21 appropriate supervisors' certifications indicated the IRS is in compliance with § 1204 (c). All 21 of these supervisors completed a consolidated office certification memorandum to the Commissioner certifying that ROTERs were not used in a prohibited manner.

Management's Response: The IRS' Chief Financial Officer (CFO) agreed with our finding in the report. The CFO stated that the IRS' goal is to achieve full compliance with the provisions of the law. The CFO added that to continue improving the IRS' program, the IRS is using an electronic spreadsheet to identify all managers and executives who must complete § 1204 (c) quarterly certifications. The IRS is also centralizing the annual independent review process of § 1204 (c) into a single IRS-wide review. The CFO stated these enhancements will allow the IRS to more accurately assess the effectiveness of the § 1204 (c) quarterly certification process.

Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers who are affected by the report finding. Please contact me at (202) 622-6510 if you have questions, or your staff may contact Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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Background

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law. Among many other requirements contained in the law, Section (§) 1204 restricts the use of enforcement statistics. Specifically, RRA 98 § 1204 (a) prohibits the IRS from using a record of tax enforcement results (ROTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases. A ROTER does not include the tax enforcement results of an individual case when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case. Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals, and the number of seizures conducted.

RRA 98 § 1204 (b) requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS requires that employees administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

RRA 98 § 1204 (c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest-ranking executive in a distinct organizational unit that supervises directly or indirectly one

¹ IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

or more § 1204 employees.² IRS procedures require that, beginning with first-line managers of § 1204 employees, each level of management self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204 (a). The appropriate supervisor is to then prepare a consolidated office certification covering the entire organizational unit.

Internal Revenue Code (I.R.C.) § 7803(d)(1) (Supp. IV 1998) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics. The TIGTA previously evaluated the IRS' compliance with RRA 98 § 1204 provisions in Fiscal Years (FY) 1999 through 2002 and reported the following:

- In FY 1999, the IRS had controls in place to identify and report violations; however, there were still instances when ROTERs were used to evaluate employees or to impose or suggest production quotas or goals.³
- In FYs 2000 and 2001, most employee evaluations and management documents did not contain tax enforcement results and did not impose production quotas and goals. However, employees were not always provided with or evaluated on the performance standard requiring the fair and equitable treatment of taxpayers.⁴
- In FY 2002, the employee evaluations and management documents did not contain ROTERs to evaluate employees or to impose or suggest production quotas or goals. However, documentation was not always

² An enforcement employee (§ 1204 employee) is one who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws.

³ The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance With Restrictions on the Use of Enforcement Statistics (Reference Number 1999-10-073, dated September 1999).

⁴ Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics (Reference Number 2000-10-118, dated September 2000); and Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved (Reference Number 2001-10-178, dated September 2001).

available to support that employees were evaluated on the performance standard requiring the fair and equitable treatment of taxpayers.⁵

The TIGTA FY 2000 report recommended that the IRS incorporate the performance standard of fair and equitable treatment of taxpayers into the evaluation forms of all employees to ensure they were evaluated on the standard. This corrective action was implemented in time to affect the results of this review, which encompassed employee performance results from October 1, 2001, through August 31, 2002.

This audit was performed between August 2002 and December 2002. The review included testing in the Organizational Performance Division in the IRS National Headquarters; the Wage and Investment, Small Business/Self-Employed, Large and Mid-Size Business, and Criminal Investigation Divisions; the National Taxpayer Advocate; and Appeals. The review included visits to IRS offices located in Atlanta, Georgia; Baltimore, Maryland; Kansas City, Missouri; Houston, Texas; and Seattle, Washington. This audit was conducted in accordance with *Government Auditing Standards* with the following scope limitation.

We were not allowed access to performance documentation maintained by the IRS' Criminal Investigation Division. The performance documentation is maintained electronically, and the TIGTA is not allowed access to this electronic system due to the Grand Jury information maintained on the same system. Therefore, the auditors had to rely on documents provided by the IRS for the Criminal Investigation Division employees sampled. The IRS provided copies of documents such as annual evaluations, performance plans, drop files, workload reviews, mid-year reviews, and award narratives.

⁵ Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement (Reference Number 2002-40-163, dated September 2002).

The Internal Revenue Service Is Generally Complying With the Law Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

A review of 74 judgmentally sampled enforcement employees' performance and related supervisory documentation prepared between October 1, 2001, and August 31, 2002, revealed no instances of the use of ROTERs, production quotas, or goals to evaluate employee performance. There was also improvement over the previous year in documenting the evaluation of employees on the fair and equitable treatment of taxpayers. In addition, a review of 21 statistically sampled appropriate supervisors showed the IRS completed the required consolidated office certification memoranda on whether ROTERs were used in a prohibitive manner.

ROTERs were not used in evaluation files, and employees were generally evaluated on the fair and equitable treatment of taxpayers

A review of employees' performance and related supervisory files prepared between October 1, 2001, and August 31, 2002, for 74 judgmentally sampled enforcement employees revealed that no ROTERs were used in evaluating performance. There was also no indication that ROTERs were used to impose or suggest production quotas or goals. In addition, 71 (96 percent) of the 74 files included evidence that the employee was evaluated on the fair and equitable treatment of taxpayers. The remaining three files did not contain evidence that the employee had been evaluated on the fair and equitable treatment of taxpayer standard. In all three files, the newly revised evaluation form was not used to document the evaluation of the employee. However, we believe that this was the result of human error and that the use of the new evaluation form, required as of October 1, 2001, will continue to reduce the recurrence of these potential violations.

Appropriate supervisors completed the quarterly consolidated office certification memorandum to the Commissioner

A review of 21 statistically sampled appropriate supervisors for the first 3 quarters of FY 2002 showed the consolidated office certification memoranda were completed and the IRS is in compliance with RRA 98 § 1204(c). A review of supporting documentation for 19 of the 21 memoranda showed that 1 did not include 1 ROTER violation that was identified in a lower level certification. However, this particular appropriate supervisor had approximately 1,500 supporting documents for the consolidated office certification memorandum. We believe it to be human error that this one ROTER was overlooked and that this does not significantly affect the overall results.

The IRS was able to provide the supporting documents for only 19 of the 21 consolidated office certification memoranda. The IRS advised us that the supporting documentation for the two remaining memoranda had been misplaced or did not exist. We do not believe these 2 missing packages would have significantly affected the review results since we did not identify any material problems with the other 19 certification packages.

The IRS designated executive level managers to serve as appropriate supervisors at various times during FY 2002 for the purpose of certifying that no § 1204 violations had occurred during the applicable time period. These executive level managers include the highest-level manager in IRS offices, for example the Deputy Commissioner, the National Taxpayer Advocate, or the Chief, Appeals.

Management's Response: The IRS' Chief Financial Officer (CFO) stated that the IRS' goal is to achieve full compliance with the provisions of the law. The CFO added that to continue improving the IRS' program, the IRS is using an electronic spreadsheet to identify all managers and executives who must complete § 1204 (c) quarterly certifications. The IRS is also centralizing the annual independent review process of § 1204 (c) into a single IRS-wide review. The CFO stated these enhancements will

allow the IRS to more accurately assess the effectiveness of the § 1204 (c) quarterly certification process.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine if the Internal Revenue Service (IRS) complied with legal guidelines set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.¹

We conducted the following tests to accomplish the objective:

- I. To determine if the IRS complied with provisions of RRA 98 § 1204 (a), which states the IRS shall not use records of tax enforcement results (ROTERs) to evaluate employees or to impose production goals or quotas, we:
 - A. Identified procedures used to ensure compliance with the provisions of RRA 98 § 1204 (a) by interviewing IRS management and reviewing the Internal Revenue Manual (IRM), IRS memos, and the IRS' 1204 Intranet Website.
 - B. Identified the potential enforcement employee population using Treasury Integrated Management Information System (TIMIS)² data and the IRS' Discovery Directory.³ We judgmentally selected five audit sites and made unannounced visits to each site. We judgmentally selected 5 managers per site to be reviewed and then judgmentally selected 3 employees per manager for review, for a total sample of 75 enforcement employees. (See Appendix IV for details on how the population of potential enforcement employees was identified and the audit sites were selected.)
 - C. Reviewed 74⁴ enforcement employees' performance evaluations, Employee Personnel Files, drop files, and performance plans, and 23 related enforcement employee managers' organizational read files and operational reviews to determine if ROTERs were used in evaluating employees or to impose production goals or quotas. Documents prepared between October 1, 2001, and August 31, 2002, were included in the review. Documents prepared in September 2002 were not included because the first unannounced site visit began during this month and all sites were treated consistently. The Criminal Investigation Division maintains

¹ IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² The TIMIS is a system that supports payroll and personnel processing and reporting requirements.

³ The Discovery Directory is a system that allows users to locate and view personal contact information for IRS employees.

⁴ Review results for 1 of the 75 sampled employees were subsequently removed because the annual evaluation document was prepared after August 31, 2002.

its evaluation documentation electronically. The Treasury Inspector General for Tax Administration is not allowed access to this electronic system due to the Grand Jury information maintained on the same system. Therefore, the auditors had to rely on documentation provided by the IRS for the nine Criminal Investigation Division employees in the sample.

- II. To determine if the IRS complied with provisions of RRA 98 § 1204 (b), which states the IRS shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance, we:
 - A. Identified procedures used to ensure compliance with the provisions of RRA 98 § 1204 (b) by interviewing IRS management and reviewing the IRM, IRS memos, and the IRS' 1204 Intranet Website.
 - B. Reviewed the same 74 enforcement employees' performance evaluations from Sub-objective I to determine if the employees were evaluated on the fair and equitable treatment of taxpayers.
 - C. Interviewed applicable employee managers to determine why potential exceptions occurred.
- III. To determine if the IRS complied with provisions of RRA 98 § 1204 (c), which states each appropriate supervisor shall certify quarterly by letter to the IRS Commissioner whether tax enforcement results are being used in a manner prohibited by subsection (a), we:
 - A. Identified procedures used to ensure compliance with the provisions of RRA 98 § 1204 (c) by interviewing IRS management and reviewing the IRM, IRS memoranda, and the IRS' 1204 Intranet Website.
 - B. Obtained a listing from the IRS of the appropriate supervisors for the first 3 quarters of FY 2002. We selected a statistical sample of 21 appropriate supervisors from the total population of 176 appropriate supervisors using a desired confidence level of 95 percent, an expected error rate of 1 percent, and a precision level of 4 percent. (See Appendix IV for details on how the population and sample were selected.) We obtained from the IRS the quarterly self-certification documentation for 19 of the 21 appropriate supervisors. The supporting documentation for two of the appropriate supervisors' consolidated certifications was not available.
 - C. Reviewed the supporting documentation received to determine if all managers completed the required quarterly self-certification documents.

Appendix II

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Augusta R. Cook, Director

Deann L. Baiza, Audit Manager

Lynn Faulkner, Senior Auditor

Sharla J. Robinson, Senior Auditor

Karen C. Fulte, Auditor

Gwendolyn M. Green, Auditor

Sylvia Sloan-Copeland, Auditor

Appendix III

Report Distribution List

Assistant Deputy Commissioner N:ADC

Commissioner, Large and Mid-Size Business Division LM

Commissioner, Small Business/Self-Employed Division S

Commissioner, Wage and Investment Division W

Chief, Appeals AP

Chief, Criminal Investigation CI

Chief Financial Officer N:CFO

Director, Strategy and Finance W:S

Director, Tax Administration Coordination N:ADC:T

Chief Counsel CC

National Taxpayer Advocate TA

Director, Legislative Affairs CL:LA

Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O

Office of Management Controls N:CFO:AR:M

Audit Liaisons:

Assistant Deputy Commissioner N:ADC

Commissioner, Large and Mid-Size Business Division LM

Commissioner, Small Business/Self-Employed Division S

Commissioner, Wage and Investment Division W

Chief, Appeals AP

Chief, Criminal Investigation CI

Chief, Customer Liaison S:COM

Director, Tax Administration Coordination N:ADC:T

National Taxpayer Advocate TA

Appendix IV

Sampling Methodology

Judgmental sample of enforcement employees

Because the Internal Revenue Service (IRS) has no systemic way to identify which employees have enforcement-related responsibilities, and since an employee's duties may change regularly, there is no way of knowing at any given time the total number of employees engaged in enforcement activities. In order to conduct the audit, it was necessary for the Treasury Inspector General for Tax Administration (TIGTA) to identify a potential enforcement employee population from which to select employee documentation for review. We obtained a computer download of the Treasury Integrated Management Information System (TIMIS)¹ data for all IRS employees for the period June 2, 2002, through June 15, 2002. We relied on the data obtained from the TIMIS and did not attempt to validate the data.

To create the potential population of enforcement employees, we extracted from the TIMIS database a listing of enforcement employees based on many of the same criteria used for the previous year's audit. The criteria used were:

- Work location in the 48 continental United States except for employees in functional areas that received a waiver from the IRS Commissioner in Fiscal Year (FY) 2001 because the function did not have duties covered by the IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.²
- Specific job series: 110, 301, 340, 343, 501, 503, 512, 526, 592, 598, 905, 920, 930, 950, 962, 986, 987, 1101, 1169, 1171, 1510, 1801, 1802, and 1811.
- After selection based on the above criteria, locations with fewer than 25 employees were removed from the population because we needed locations that would likely have managers on site.

This information was used to identify the number of potential enforcement employees within each business unit and function within each city. Based on prior audit results and resource and time constraints, our review was limited to the four business units and functions with the highest percentage of potential enforcement employees based on the TIMIS data. Using this methodology, the Small Business/Self-Employed (SB/SE), Wage and Investment (W&I), Large and Mid-Size Business (LMSB), and Criminal Investigation (CI) Divisions were included in the review.

¹ The TIMIS is a system that supports payroll and personnel processing and reporting requirements.

² IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

The potential enforcement employee population disbursement, geographic coverage, travel time to the audit sites, prior audit coverage, and audit constraints on time, resources, and budget were all factors considered in selecting the five audit sites of Atlanta, Georgia; Baltimore, Maryland; Kansas City, Missouri; Houston, Texas; and Seattle, Washington.

Once the audit sites were determined, the TIMIS data and the IRS Discovery Directory³ were used to determine the number of managers as well as the number of different addresses of the managers located within the audit sites. This information was considered when selecting the business units and functions to be reviewed at each site.

Unannounced visits were made to each of the five audit sites. The listing of potential enforcement employee managers we compiled using the Discovery Directory allowed us to identify initial contacts in order to begin our sampling. The initial contact points for some sites also identified enforcement employee managers located on site. This information was used, as well as the managers we previously identified, to judgmentally select 5 managers per site and 3 employees per manager, for a total of 75 employees. We reviewed the selected employees' performance documentation prepared between October 1, 2001, and August 31, 2002, for compliance with the requirements of RRA 98 §§ 1204 (a) and (b).

The sample distribution follows:

Business Unit (BU)	BU Reviewed at	Number of Managers Selected	Number of Employees Selected	Percent of Total Sample Population
SB/SE	5 sites	14	42	56 %
W&I	3 sites	5	15	20 %
LMSB	2 sites	3	9	12 %
CI	2 sites	3	9	12 %
TOTALS		25	75	100 %

Statistical sample of appropriate supervisors

A statistical sample of appropriate supervisors was selected for review to determine the IRS' compliance with the self-certification requirement of RRA 98 § 1204 (c).

The IRS' Organizational Performance Division, Data Analysis, Standards, and Reporting, identified the population of 176 appropriate supervisors for the first 3 quarters of FY 2002. The

³ The Discovery Directory is a system that allows users to locate and view personal contact information for IRS employees.

⁴ One of the 75 sampled employees was subsequently dropped because the evaluation document was prepared after August 31, 2002.

audit period did not allow for the fourth quarter certifications to be included in the sample. We used attribute sampling and the following formula to calculate the minimum sample size (n) of 21:

$$n = (NZ^2 p(1-p)) / (NE^2 + Z^2 p(1-p)).$$

N = Population (176 appropriate supervisors for the first 3 quarters of FY 2002).

Z = Desired Confidence Level (95 percent).

p = Expected Error Rate (1 percent).

E = Precision Level (4 percent).

The appropriate supervisors were numbered 1 through 176. We used a statistical sampling computer program to randomly select 21 numbers. The randomly selected numbers corresponded to a specific appropriate supervisor for a specific quarter.

We reviewed the supporting documentation for 19 of the 21 appropriate supervisor consolidated office certifications sampled. This included reviewing the Consolidated Office Certification Memorandum and the supporting managers' quarterly self-certification documents. The IRS advised us that the supporting documentation for the two remaining consolidated office certifications had been misplaced or did not exist.

Although a statistical sample was taken, results were not projected due to the differences in the volume of the supporting documents for the consolidated office certifications. For example, 1 appropriate supervisor's consolidated certification could have 1 supporting document, while another could have over 1,500 supporting documents.

Appendix V

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

March 14, 2003



MEMORANDUM FOR GORDON C. MILBOURN III

ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

W. Todd Grams

SUBJECT:

Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement

Results (Audit #200240070)

Your report reviews our compliance with the IRS Restructuring and Reform Act of 1898 (RRA 98) Section 1204 requirements that restrict the use of enforcement statistics to evaluate IRS employees or to impose or suggest production quotas or goals. It also requires us to evaluate employees using the fair and equitable treatment of taxpayers as a performance standard and to certify quarterly on the use of tax enforcement results. I am pleased your review found that we generally complied with these provisions of the law. Our goal is to achieve full compliance.

In your report, you identified no instances of potential violations on the use of Records of Tax Enforcement Results (ROTERs). You also found we improved compliance with employee evaluations on the fair and equitable treatment of taxpayers and complied with quarterly certification requirements.

To continue improving our program, we are using an electronic spreadsheet to identify all managers and executives who must complete Section 1204 quarterly certifications. We are also centralizing our annual independent review process of Section 1204 into a single Servicewide review. These enhancements will allow us to more accurately assess the effectiveness of the Section 1204 quarterly certification process.

You identified several situations in your report where problems with employee evaluations and certification occurred. So that we can follow up on these problems, we have requested organizational information from your office concerning:

- The three employee evaluations that did not address the standard for fair and equitable treatment of taxpayers
- The two situations where consolidated office certification documentation was not available

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> The consolidated office certification memorandum that did not include a ROTER violation that had been identified in a lower level certification

We look forward to receiving this information and thank you for your cooperation.

If you have any questions, please contact me at 202.622.6400, or your staff may call L. Philip Mahler, Acting Associate Chief Financial Officer, Corporate Planning and Performance Unit at 202.622.4909.